

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

MAY SESSION, 1995

FILED
March 21, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellee,)

v.)

DAVID W. CROWDER,)

Appellant.)

No. 03C01-9412-CR-00437

Union County

Hon. Lee Asbury, Judge

(Theft over \$10,000 and possession of marijuana)

For the Appellant:

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For the Appellee:

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and
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OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
Judge

OPINION

The defendant, David W. Crowder, entered guilty pleas in the Criminal Court of Union County for theft of property valued at over ten thousand dollars, a Class C felony, and simple possession of marijuana, a Class A misdemeanor. He received a sentence of three years as a Range I, standard offender for the theft conviction concurrent with a sentence of eleven months and twenty-nine days for the possession of marijuana conviction and was placed on unsupervised probation. The defendant appeals as of right upon a certified question of search and seizure law that is dispositive of his case. See T.R.A.P. 3(b); Tenn. R. Crim. P. 37(b).

The defendant contends that the stop of his truck violated his Fourth Amendment rights under the United States Constitution because it was based on a subjective and inarticulable hunch. He argues that because the initial stop was unconstitutional, his subsequent consent to search leading to the seizure of stolen property and marijuana was also unlawful. The state responds that the officer's observation of several crates of large green metallic objects in the bed of the defendant's truck coupled with his knowledge of recent thefts of farm equipment created a reasonable suspicion based upon specific and articulable facts upon which to base the investigatory stop.

Deputy Robert Turner of the Union County Sheriff's Department testified at the hearing on the motion to suppress that he was on duty from 11:00 p.m. to 7:00 a.m. on April 1, 1993. He stated that he encountered the defendant at around 12:03 a.m. as the defendant was traveling southbound on Highway 33 in Maynardville. He said that he noticed several large green metallic objects wrapped in crates and plastic in the bed of the defendant's truck as it passed under the street lights. He said that he knew that there had been several thefts of John Deere farming equipment from

dealerships and farmers. He stated that he became suspicious and began to follow the defendant. He acknowledged that the truck was traveling toward the local John Deere dealership. He said that he stopped the truck and asked permission to search. He stated that the defendant consented to the search. He said that the search uncovered a small amount of marijuana and stolen farm equipment.

On cross-examination, Deputy Turner reiterated that the defendant was traveling toward, not away from, the John Deere dealership. He admitted that there had been no reports of thefts in the last few days. He also admitted that the defendant did not drive in any erratic manner that caught his attention and that the sole basis for his suspicion was the large green metallic objects in the bed of the truck. On redirect examination, Deputy Turner said that he had no way of knowing how recent the last theft had been but he guessed that it had occurred about one month before he stopped the defendant. He also admitted that there were no reported thefts of farm equipment that night.

The trial court overruled the defendant's motion to suppress, concluding that the stop of the truck was reasonable and that the subsequent search was proper because of the defendant's consent to search. On appeal, the trial court's findings of fact on a motion to suppress are conclusive unless the evidence preponderates against them. State v. Binion, 900 S.W.2d 702, 704 (Tenn. Crim. App. 1994).

Generally, we note that the police are entitled to stop a car for investigative purposes if they have reasonable suspicion, based upon specific and articulable facts, that an offense is being or is about to be committed. See State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992). The question of reasonable suspicion is answered by considering the totality of the circumstances, including looking at the gravity of the public concern at stake, the degree that police intrusion advances that

concern and the severity of the intrusion. See Watkins, 827 S.W.2d at 294; State v. Pully, 863 S.W.2d 29, 30 (Tenn. 1993).

In the present case, the deputy observed items resembling farm equipment being transported late at night in an area in which there had been several recent thefts of farm equipment from both dealerships and local farms. This observation gave sufficient rise to a reasonable suspicion that the defendant was transporting stolen farm equipment. We conclude that the investigatory stop for making further inquiry was justified and that the ensuing seizure of stolen items and marijuana pursuant to the defendant's consent to search was legal.

In consideration of the foregoing and the record as a whole, we hold that the evidence in this case does not preponderate against the trial court's findings. The judgments of conviction are affirmed.

Joseph M. Tipton, Judge

CONCUR:

Gary R. Wade, Judge

Cornelia A. Clark, Special Judge